IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4787 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECTIVE DIRECTOR - Petitioner(s)

Versus

BHANUBEN DEVENDRAPRASAD JOSHI & 3 - Respondent(s)

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Appearance :

MR MANISH R BHATT for Petitioner No(s).: 1.

MR NILESH A PANDYA for Respondent No(s).: 1, 2, 3,4.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 27/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 18.04.1998 passed by the learned Judge of the Labour Court and Ex-officio Commissioner for the Workmen's

Compensation Act, Vadodara in Application no.23 of 1991, whereby the said application was partly allowed.

2.0 The brief facts of the case are that deceased Devendraprasad Pranshanker Joshi had joined the services of the petitioner Corporation in the year 1970. On 15.12.1989, Devendraprasad Pranshanker Joshi was found dead in the factory of the petitioner. On 23.04.1991 the heirs of the deceased filed Application No.23 of 1991 before the Labour Court and Ex-officio Commissioner for the Workmen's Compensation Act, Vadodara.

2.1 The Labour Court vide impugned order dated 18.04.1998 partly allowed the application of the heirs and directed the petitioner to pay compensation of Rs.71,396/- along with interest and also fine / penalty of Rs.35,698/- and costs. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. It may be noted that an Appeal u/s.30 of the said Act is provided against the order of the Commissioner, since, in the instant case, the Commissioner had no jurisdiction to entertain the matter. Even otherwise, the remedy of Appeal u/s.30

of the said Act is illusory, since it requires, as a condition precedent, deposit of the entire amount before the Commissioner and a Certificate to be produced before this Court. The petitioner being a Government of India Undertaking and if the decision of the Commissioner is permitted to continue, then it will create a precedent. Hence, I am of the opinion that the appropriate remedy available to the petitioner is to prefer a First Appeal before this Court.

4.0 In above view of the matter, the appropriate remedy available to the petitioner is to file a First Appeal before this Court. If the petitioner is desirous to file First Appeal, then it shall do it within a period of thirty days from today. It is made clear that the period of this petition may be taken into consideration while deciding the delay condonation application. With the aforesaid observation, the petition stands disposed of. Interim relief granted by this Court will continue for a period of thirty days from today. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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